

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BENNIE RAY BROWN,)	CV F 05-0153 AWI WMW HC
)	
Petitioner,)	FINDINGS AND RECOMMENDATIONS RE
)	DISMISSAL OF ACTION
v.)	
)	
PEOPLE OF THE STATE OF)	
CALIFORNIA,)	
)	
Respondent.)	

Petitioner is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On April 18, 2006, the court entered an order requiring Petitioner to file a first amended petition naming the correct respondent within twenty days. Petitioner was expressly warned that failure to comply with the court's order would result in recommendations that this action be dismissed. Petitioner has not filed a first amended petition or otherwise responded to the court's order.

Local Rule 11-110 provides that "failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of the Court." District courts have the inherent power to control their dockets and "in the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal of a case." Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an

1 action, failure to obey a court order, or failure to comply with local rules. See, e.g. Ghazali v.
2 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v.
3 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order
4 requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
5 (dismissal for failure to comply with local rule requiring pro se petitioners to keep court apprised of
6 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
7 comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for
8 failure to lack of prosecution and failure to comply with local rules). In determining whether to
9 dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with
10 local rules, the court must consider several factors: (1) the public's interest in expeditious resolution
11 of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4)
12 the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic
13 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at
14 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

15 In the instant case, the court finds that the public's interest in expeditiously resolving this
16 litigation and the court's interest in managing the docket weigh in favor of dismissal, as this case has
17 been pending since February 3, 2005. The third factor, risk of prejudice to respondent, also weighs
18 in favor of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
19 in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
20 factor -- public policy favoring disposition of cases on their merits -- is greatly outweighed by the
21 factors in favor of dismissal discussed herein. Finally, a court's warning to a party that his failure to
22 obey the court's order will result in dismissal satisfies the "consideration of alternatives"
23 requirement. Ferdik v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at
24 1424. The court's order requiring petitioner to submit an application to proceed in forma pauperis
25 expressly stated: "Petitioner's failure to comply with this order will result in findings and
26 recommendations that this entire action be dismissed." Thus, Petitioner had adequate warning that
27 dismissal would result from his noncompliance with the court's order.
28

1 Accordingly, the court HEREBY RECOMMENDS that this action be dismissed based on
2 petitioner's failure to obey the court's order of April 18, 2006.

3 These Findings and Recommendations are submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
5 days after being served with these Findings and Recommendations, petitioner may file written
6 objections with the court. Such a document should be captioned "Objections to Magistrate Judge's
Findings and Recommendations." Petitioner is advised that failure to file objections within the
specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
1153 (9th Cir. 1991) IT IS SO ORDERED.

7 **Dated: July 24, 2006**
mmkd34

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE